

63A-4-101. Risk manager -- Appointment -- Duties.

(1) The executive director shall appoint a risk manager, who shall be qualified by education and experience in the management of general property and casualty insurance.

(2) The risk manager shall:

(a) acquire and administer the following purchased by the state:

(i) all property, casualty insurance; and

(ii) subject to Section 34A-2-203, workers' compensation insurance;

(b) recommend that the executive director make rules:

(i) prescribing reasonable and objective underwriting and risk control standards for state agencies;

(ii) prescribing the risks to be covered by the Risk Management Fund and the extent to which these risks will be covered;

(iii) prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the fund;

(iv) prescribing procedures for making claims and proof of loss; and

(v) establishing procedures for the resolution of disputes relating to coverage or claims, which may include binding arbitration;

(c) implement a risk management and loss prevention program for state agencies for the purpose of reducing risks, accidents, and losses to assist state officers and employees in fulfilling their responsibilities for risk control and safety;

(d) coordinate and cooperate with any state agency having responsibility to manage and protect state properties, including:

(i) the state fire marshal;

(ii) the director of the Division of Facilities Construction and Management;

(iii) the Department of Public Safety; and

(iv) institutions of higher education;

(e) maintain records necessary to fulfill the requirements of this section;

(f) manage the fund in accordance with economically and actuarially sound principles to produce adequate reserves for the payment of contingencies, including unpaid and unreported claims, and may purchase any insurance or reinsurance considered necessary to accomplish this objective; and

(g) inform the agency's governing body and the governor when any agency fails or refuses to comply with reasonable risk control recommendations made by the risk manager.

(3) Before the effective date of any rule, the risk manager shall provide a copy of the rule to each agency affected by it.

Amended by Chapter 275, 2006 General Session

63A-4-102. Risk manager -- Powers.

(1) The risk manager may:

(a) enter into contracts;

(b) purchase insurance;

(c) adjust, settle, and pay claims;

- (d) pay expenses and costs;
 - (e) study the risks of all state agencies and properties;
 - (f) issue certificates of coverage to state agencies for any risks covered by Risk Management Fund;
 - (g) make recommendations about risk management and risk reduction strategies to state agencies;
 - (h) in consultation with the attorney general, prescribe insurance and liability provisions to be included in all state contracts;
 - (i) review agency building construction, major remodeling plans, agency program plans, and make recommendations to the agency about needed changes to address risk considerations;
 - (j) attend agency planning and management meetings when necessary;
 - (k) review any proposed legislation and communicate with legislators and legislative committees about the liability or risk management issues connected with any legislation; and
 - (l) solicit any needed information about agency plans, agency programs, or agency risks necessary to perform the risk manager's responsibilities under this part.
- (2) (a) The risk manager may expend money from the Risk Management Fund to procure and provide coverage to all state agencies and their indemnified employees, except those agencies or employees specifically exempted by statute.
- (b) The risk manager shall apportion the costs of that coverage according to the requirements of this part.
- (3) Before charging a rate, fee, or other amount to an executive branch agency, or to a subscriber of services other than an executive branch agency, the director shall:
- (a) submit the proposed rates, fees, or other amount and cost analysis to the Rate Committee established in Section 63A-1-114; and
 - (b) obtain the approval of the Legislature as required by Section 63J-1-410.
- (4) The director shall conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and fees, which analysis shall include a comparison of the division's rates and fees with the fees of other public or private sector providers where comparable services and rates are reasonably available.

Amended by Chapter 183, 2009 General Session

63A-4-103. Risk management -- Duties of state agencies.

- (1) (a) Unless specifically authorized by statute to do so, a state agency may not:
- (i) purchase insurance or self-fund any risk unless authorized by the risk manager; or
 - (ii) procure or provide liability insurance for the state.
- (b) (i) Notwithstanding the provisions of Subsection (1)(a), the State Board of Regents may authorize higher education institutions to purchase insurance for, or self-fund, risks associated with their programs and activities that are not covered through the risk manager.
- (ii) The State Board of Regents shall provide copies of those purchased policies

to the risk manager.

(iii) The State Board of Regents shall ensure that the state is named as additional insured on any of those policies.

(2) Each state agency shall:

(a) comply with reasonable risk related recommendations made by the risk manager;

(b) participate in risk management training activities conducted or sponsored by the risk manager;

(c) include the insurance and liability provisions prescribed by the risk manager in all state contracts, together with a statement certifying to the other party to the contract that the insurance and liability provisions in the contract are those prescribed by the risk manager;

(d) at each principal design stage, provide written notice to the risk manager that construction and major remodeling plans relating to agency buildings and facilities to be covered by the fund are available for review, for risk control purposes, and make them available to the risk manager for his review and recommendations; and

(e) cooperate fully with requests from the risk manager for agency planning, program, or risk related information, and allow the risk manager to attend agency planning and management meetings.

(3) Failure to include in the contract the provisions required by Subsection (2)(c) does not make the contract unenforceable by the state.

Amended by Chapter 324, 2010 General Session

63A-4-104. Course-of-construction insurance for facilities constructed by This is the Place Foundation.

The risk manager may provide course-of-construction insurance for facilities constructed by This is the Place Foundation at This is the Place State Park and bill the Division of Parks and Recreation for the cost of the insurance.

Enacted by Chapter 225, 1998 General Session

63A-4-201. Risk Management Fund created -- Administration -- Use.

(1) (a) There is created the Risk Management Fund, which shall be administered by the risk manager.

(b) The fund shall cover property, liability, fidelity, and other risks as determined by the risk manager in consultation with the executive director.

(2) The risk manager may only use the fund to pay:

(a) insurance or reinsurance premiums;

(b) costs of administering the fund;

(c) loss adjustment expenses;

(d) risk control and related educational and training expenses; and

(e) loss costs which at the time of loss were eligible for payment under rules previously issued by the executive director under the authority of Section 63A-4-101.

(3) In addition to any money appropriated to the fund by the Legislature, the risk

manager shall deposit with the state treasurer for credit to the fund:

(a) any insured loss or loss expenses paid by insurance or reinsurance companies;

(b) the gross amount of all premiums and surcharges received under Section 63A-4-202;

(c) the net refunds from cancelled insurance policies necessary to self-insure previously insured risks, with the balance of the proceeds to be refunded to the previously insured agencies;

(d) all refunds, returns, or dividends from insurance carriers not specifically covered in Subsections (3)(a), (b), and (c);

(e) savings from amounts otherwise appropriated for participation in the fund; and

(f) all net proceeds from sale of salvage and subrogation recoveries from adverse parties related to losses paid out of the fund.

(4) (a) Pending disbursement, the risk manager shall provide surplus money in the fund to the state treasurer for investment as provided in Title 51, Chapter 7, State Money Management Act.

(b) The state treasurer shall deposit all interest earned on invested fund money into the fund.

Amended by Chapter 303, 2011 General Session

63A-4-202. Determination of insurance premiums -- Information furnished by agencies -- Notice to agencies.

(1) Each agency shall provide the risk manager with all reasonable information necessary to compute insurance premiums whenever he requests that information from them.

(2) (a) The risk manager shall charge to each agency that receives insurance coverage from the Risk Management Fund its proportionate share of the cost incurred based upon actuarially sound rating techniques.

(b) That premium shall include all costs of operating the fund as stated in Section 63A-4-201.

(3) To enable each participating agency to meet its budgeting requirements, the risk manager shall provide each participating agency with projected insurance costs for the next two fiscal years within the time limits required.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-4-203. Refusal of agency to pay charges -- Notice to the Division of Finance for collection.

(1) If any agency of the state refuses to remit any payment as charged by the risk manager within 30 days after the date due, the risk manager may certify to the director of the Division of Finance the fact of the refusal and the amount of the delinquent payment, together with a request that the amount be transferred from funds of the delinquent agency to the Risk Management Fund.

(2) The risk manager shall mail a copy of the certification and request to the delinquent agency.

(3) The risk manager shall resolve claims against the fund in an expeditious manner.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-4-204. School district participation in Risk Management Fund.

(1) (a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of the school district's board of education.

(b) (i) Upon approval by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund and may permit a foundation established under Section 53A-4-205 to participate in the Risk Management Fund.

(ii) Upon approval by the state risk manager and the State Board of Education, a state public education foundation may participate in the Risk Management Fund.

(c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the fund.

(2) The state risk manager shall contract for all insurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance program provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.

(3) (a) The state risk manager shall treat each participating public school district as a state agency when participating in the Risk Management Fund.

(b) Each public school district participating in the fund shall comply with the provisions of this part that affect state agencies.

(4) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (4)(b) regarding the coverage against legal liability provided a school district employee of this state:

(i) by the Risk Management Fund;

(ii) under Title 63G, Chapter 7, Governmental Immunity Act of Utah; and

(iii) under Title 52, Chapter 6, Reimbursement of Legal Fees and Costs to Officers and Employees.

(b) (i) The information described in Subsection (4)(a) shall include:

(A) the eligibility requirements, if any, to receive the coverage;

(B) the basic nature of the coverage for a school district employee, including what is not covered; and

(C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a school district employee in this state.

(ii) The information described in Subsection (4)(a) may include:

(A) comparisons the risk manager considers beneficial to a school district employee between:

- (I) the coverage described in Subsection (4)(a); and
- (II) other coverage the risk manager knows is commonly available to a school district employee in this state; and
- (B) any other information the risk manager considers appropriate.
- (c) The risk manager shall provide the information prepared under this Subsection (4) to each school district that participates in the Risk Management Fund.
- (d) A school district that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (4)(c) to each school district employee within the school district:
 - (i) at the time an employee enters into an employment contract and signs a separate acknowledgment of legal liability protection in accordance with Section 53A-3-411; or
 - (ii) if the school district does not provide the information to the employee pursuant to Subsection (4)(d)(i):
 - (A) within 30 days of the day the school district employee is hired by the school district; and
 - (B) by no later than April 15 of each calendar year.

Amended by Chapter 382, 2008 General Session

63A-4-204.5. Charter school participation in Risk Management Fund.

- (1) A charter school established under the authority of Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, may participate in the Risk Management Fund upon the approval of the state risk manager and the governing body of the charter school.
- (2) (a) For purposes of administration, the state risk manager shall treat each charter school participating in the fund as a state agency.
- (b) Each charter school participating in the fund shall comply with the provisions of this part that affect state agencies.
- (3) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (3)(b) regarding the coverage against legal liability provided a charter school employee of this state:
 - (i) by the Risk Management Fund;
 - (ii) under Title 63G, Chapter 7, Utah Governmental Immunity Act of Utah; and
 - (iii) under Title 52, Chapter 6, Reimbursement of Legal Fees and Costs to Officers and Employees.
- (b) (i) The information described in Subsection (3)(a) shall include:
 - (A) the eligibility requirements, if any, to receive the coverage;
 - (B) the basic nature of the coverage for a charter school employee, including what is not covered; and
 - (C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a charter school employee in this state.
- (ii) The information described in Subsection (3)(a) may include:
 - (A) comparisons the risk manager considers beneficial to a charter school employee between:

- (I) the coverage described in Subsection (3)(a); and
- (II) other coverage the risk manager knows is commonly available to a charter school employee in this state; and
- (B) any other information the risk manager considers appropriate.
- (c) The risk manager shall provide the information prepared under this Subsection (3) to each charter school that participates in the Risk Management Fund.
- (d) A charter school that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (3)(c) to each charter school employee within the charter school:
 - (i) within 30 days of the day the charter school employee is hired by the charter school; and
 - (ii) by no later than April 15 of each calendar year.

Amended by Chapter 382, 2008 General Session

63A-4-205.5. Risk management -- Coverage of the Utah Communications Authority.

The Utah Communications Authority established under authority of Title 63H, Chapter 7, Utah Communications Authority Act, may participate in the Risk Management Fund.

Amended by Chapter 320, 2014 General Session

63A-4-206. Limits on use of risk management data as evidence.

Notwithstanding any other provisions of law, any reports, recommendations, surveys, schedules, lists, or data compiled, or action taken or not taken by or at the request of the risk manager to identify, evaluate, or plan the safety enhancement or risk reduction of any potential accident sites or other hazards related to any entity covered by the Risk Management Fund may not be admitted into evidence in any court, or used for any other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in those reports, recommendations, surveys, schedules, lists, or data.

Renumbered and Amended by Chapter 212, 1993 General Session

63A-4-207. Records of risk management.

(1) A record provided to the Division of Risk Management by any governmental entity or political subdivision covered by the Risk Management Fund for the purpose of risk control or claims activities of the division shall be considered a record of the originating governmental entity or political subdivision for purposes of Title 63G, Chapter 2, Government Records Access and Management Act, if the originating governmental entity or political subdivision retains a copy of the record.

(2) Notwithstanding Subsection 63G-2-201(5), records may be exchanged between the Division of Risk Management and any governmental entity or political subdivision covered by the Risk Management Fund without meeting the requirements

of Section 63G-2-206, provided that they are used only for purposes of risk control or claims activities.

Amended by Chapter 382, 2008 General Session